

Export-Import Bank of the U.S.

§ 404.24

Ex-Im Bank employee for purposes of this subpart. Ex-Im Bank shall supply any such contractor with a copy of the regulations in this subpart upon entering into a contract with Ex-Im Bank.

§ 404.23 Other rights and services.

Nothing in this subpart shall be construed to entitle any person to any service or to the disclosure of any record to which such person is not entitled under the Privacy Act.

Subpart C—Demands for Testimony of Current and Former Ex-Im Bank Personnel and for Production of Ex-Im Bank Records

SOURCE: 71 FR 14361, Mar. 22, 2006, unless otherwise noted.

§ 404.24 Exemptions: EIB-35—Office of Inspector General Investigative Records.

(a) *Criminal Law Enforcement*—(1) *Exemption*. Under the authority granted by 5 U.S.C. 552a(j)(2), Ex-Im Bank hereby exempts the system of records entitled “EIB-35—Office of Inspector General Investigative Records” from the provisions of 5 U.S.C. 552a(c)(3), (c)(4), (d)(1) through (4), (e)(1) through (3), (e)(4)(G) and (H), (e)(5), (e)(8), (f), and (g) because the system contains information pertaining to the enforcement of criminal laws. “EIB-35—Office of Inspector General Investigative Records” is maintained by the Ex-Im Bank Office of Inspector General (“OIG” or “Ex-Im Bank OIG.”)

(2) *Reasons for exemption*. The reasons for asserting this exemption are:

(i) Disclosure to the individual named in the record pursuant to 5 U.S.C. 552a(c)(3), (c)(4), or (d)(1) through (4) could seriously impede or compromise the investigation by alerting the target(s), subjecting a potential witness or witnesses to intimidation or improper influence, and leading to destruction of evidence. Disclosure could enable suspects to take action to prevent detection of criminal activities, conceal evidence, or escape prosecution.

(ii) Application of 5 U.S.C. 552a(e)(1) is impractical because the relevance of

specific information might be established only after considerable analysis and as the investigation progresses. Effective law enforcement requires the OIG to keep information that may not be relevant to a specific OIG investigation, but which may provide leads for appropriate law enforcement and to establish patterns of activity that might relate to the jurisdiction of the OIG and/or other agencies.

(iii) Application of 5 U.S.C. 552a(e)(2) would be counterproductive to the performance of a criminal investigation because it would alert the individual to the existence of an investigation. In any investigation, it is necessary to obtain evidence from a variety of sources other than the subject of the investigation in order to verify the evidence necessary for successful litigation or prosecution.

(iv) Application of 5 U.S.C. 552a(e)(3) could discourage the free flow of information in a criminal law enforcement inquiry.

(v) The requirements of 5 U.S.C. 552a(e)(4)(G) and (H) and (f) would be counterproductive to the performance of a criminal investigation. To notify an individual at the individual's request of the existence of records in an investigative file pertaining to such individual, or to grant access to an investigative file could interfere with investigative and enforcement proceedings, deprive co-defendants of a right to a fair trial or other impartial adjudication, constitute an unwarranted invasion of personal privacy of others, disclose the identity or confidential sources, reveal confidential information supplied by these sources and disclose investigative techniques and procedures. Nevertheless, Ex-Im Bank OIG has published notice of its notification, access, and contest procedures because access may be appropriate in some cases.

(vi) Although the OIG endeavors to maintain accurate records, application of 5 U.S.C. 552a(e)(5) is impractical because maintaining only those records that are accurate, relevant, timely, and complete and that assure fairness

in determination is contrary to established investigative techniques. Information that may initially appear inaccurate, irrelevant, untimely, or incomplete may, when collated and analyzed with other available information, become more pertinent as an investigation progresses.

(vii) Application of 5 U.S.C. 552a(e)(8) could prematurely reveal an ongoing criminal investigation to the subject of the investigation.

(viii) The provisions of subsection (g) do not apply to this system if an exemption otherwise applies.

(b) *Other Law Enforcement*—(1) *Exemption*. Under the authority granted by 5 U.S.C. 552a(k)(2), Ex-Im Bank hereby exempts the system of records entitled “EIB-35—Office of Inspector General Investigative Records” from the provisions of 5 U.S.C. 552a(c)(3), (d)(1) through (4), (e)(1), (e)(4)(G) and (H), and (f) for the same reasons as stated in paragraph (a)(2) of this section, that is, because the system contains investigatory material compiled for law enforcement purposes other than material within the scope of subsection 552a(j)(2).

(2) *Reasons for exemption*. The reasons for asserting this exemption are because the disclosure and other requirements of the Privacy Act could substantially compromise the efficacy and integrity of OIG operations. Disclosure could invade the privacy of other individuals and disclose their identity when they were expressly promised confidentiality. Disclosure could interfere with the integrity of information which would otherwise be subject to privileges (see, e.g., 5 U.S.C. 552(b)(5)), and which could interfere with other important law enforcement concerns (see, e.g., 5 U.S.C. 552(b)(7)).

(c) *Federal Civilian or Contract Employment*—(1) *Exemption*. Under the authority granted by 5 U.S.C. 552a(k)(5), Ex-Im Bank hereby exempts the system of records entitled “EIB-35—Office of Inspector General Investigative Records” from the provisions of 5 U.S.C. 552a(c)(3), (d)(1) through (4), (e)(1), (e)(4)(G) and (H), and (f) because the system contains investigatory material compiled for the purpose of determining eligibility or qualifications

for federal civilian or contract employment.

(2) *Reasons for exemption*. The reasons for asserting this exemption are the same as described in paragraph (a)(2) of this section.

[77 FR 41886, July 17, 2012, as amended at 77 FR 42949, July 23, 2012]

§ 404.25 Applicability.

This subpart applies exclusively to demands for testimony and/or production of records issued to Ex-Im Bank personnel, in connection with legal proceedings to which Ex-Im Bank is not a party, regarding information acquired in the course of the performance of official duties or due to their official status. Nothing in this subpart shall be construed to waive the sovereign immunity of the United States. This subpart shall not apply to the following:

(a) Demands for testimony and/or production of records pursuant to a legal proceeding to which Ex-Im Bank is a party:

(b) Demands for testimony and/or production of records in those instances in which Ex-Im Bank personnel are asked to disclose information wholly unrelated to their official duties; and

(c) Congressional demands and requests for testimony or records.

§ 404.26 Definitions.

For purposes of this subpart, the following definitions shall apply—

Demand—includes an order, subpoena, or other compulsory process issued by a party in litigation or a court of competent jurisdiction, requiring the production or release of Ex-Im Bank information or records, or requiring the testimony of Ex-Im Bank personnel.

Ex-Im Bank personnel—includes any current or former officer or employee of Ex-Im Bank, including all individuals who have been appointed by, or subject to, the official supervision, jurisdiction, or control of any Ex-Im Bank employees. This definition encompasses all individuals hired through contractual agreements with Ex-Im Bank, such as: consultants, contractors, sub-contractors, and their employees.